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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ESMELING L. BAHENA,

12 Plaintiff,

13 v.

14 LEMON, *et al.*,

15 Defendants.
16

No. 1:22-cv-01585-JLT-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
DISMISSAL OF CERTAIN CLAIMS AND
DEFENDANTS

(Doc. 24)

17 The assigned magistrate judge issued findings and recommendations that this action
18 proceed on Plaintiff's second amended complaint against Defendant Mendoza for violations of
19 the Eighth Amendment due to closing the cell door on Plaintiff's fingers and for failing to seek
20 medical treatment for him despite Plaintiff's repeated calls for help. (Doc. 24.) The magistrate
21 judge recommended that all other claims and defendants be dismissed based on Plaintiff's failure
22 to state claims upon which relief may be granted. (*Id.*) The Court served the findings and
23 recommendations on Plaintiff and notified him that any objections were to be filed within 14 days
24 after service. (*Id.* at 17.)

25 Instead, Plaintiff filed a motion for extension of time to file an amended complaint. (Doc.
26 25.) Finding that further leave to amend was not warranted, the magistrate judge denied the
27 motion but extended the deadline for Plaintiff to file his objections to the pending findings and
28 recommendations. (Doc. 26.) The Court explicitly instructed him that he "**may not file an**

1 **amended complaint in response to this order.”** (*Id.* at 2 (emphasis in original).) Despite this
2 instruction, on April 24, 2023, Plaintiff lodged a third amended complaint. (Doc. 27.) Plaintiff
3 has not filed objections to the findings and recommendations, and the deadline to do so has
4 expired.

5 Despite lacking leave to file the amended complaint, the Court has reviewed the lodged
6 third amended complaint. However, third amended complaint includes additional factual
7 allegations and adds new and unrelated claims, despite being warned in prior screening orders
8 that Plaintiff may not add new, unrelated claims to his amended complaints. Even still, the Court
9 finds that the lodged third amended complaint again fails to cure the deficiencies identified by the
10 findings and recommendations.

11 According to 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo* review of this
12 case. Having carefully reviewed the entire file, including the lodged third amended complaint,
13 the Court finds the findings and recommendations to be supported by the record and by proper
14 analysis. Thus, the Court **ORDERS**:

- 15 1. The findings and recommendations issued on March 15, 2023, (Doc. 24), are
16 **ADOPTED IN FULL**.
- 17 2. The third amended complaint lodged on April 24, 2023, (Doc. 27), is **STRICKEN**
18 from the record.
- 19 3. This action shall proceed on Plaintiff’s second amended complaint, filed February 21,
20 2023, (Doc. 21), against Defendant Mendoza for excessive force and deliberate
21 indifference to medical care in violation of the Eighth Amendment.
- 22 4. All other claims and defendants are **DISMISSED** from this action for failure to state
23 claims upon which relief may be granted.
- 24 5. This action is referred to the Magistrate Judge for proceedings consistent with this
25 order.

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27 IT IS SO ORDERED.

28 Dated: **May 26, 2023**


UNITED STATES DISTRICT JUDGE

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